

**Statement
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USDA Forest Service
Subcommittee on Public Lands and Forests
Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C.
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Concerning:

**S. 1846, To Prohibit Oil and Gas Drilling on the
Finger Lakes National Forest
S. 2222, Cape Fox Land Entitlement Adjustment Act of 2002
S. 1879, Russian River Land Act
S. 2471, Independent Investigation of Federal Wildland Firefighter
Fatalities**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am Tom Thompson, Deputy Chief for the National Forest System, USDA Forest Service. I am here today to provide the Department's views on four bills: S. 1846, to prohibit oil and gas drilling on the Finger Lakes National Forest; S. 2222, to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes; S. 1879, to resolve claims of Cook Inlet Region, Inc. to land adjacent to the Russian River; and S. 2471, to provide for the independent investigation of Federal wildland firefighter fatalities.

S. 1846—to prohibit oil and gas drilling on the Finger Lakes National Forest

S. 1846 would prohibit the issuance of any Federal permit or lease for oil or gas drilling in Finger Lakes National Forest in the State of New York. Although the Department does not oppose enactment of S. 1846, the measure does raise a number of questions for USDA. The Department would like to work with the Committee in more detail to address leasing in times of national emergency or in response to unforeseen events.

The December, 2001 revision of the Finger Lakes National Forest Land and Resource Management Plan provided that oil and gas resources would not be available for leasing.

This decision reflected the opinion of a vast majority of those responding to the draft revision who were strongly against any leasing of federal oil and gas resources on the Finger Lakes National Forest. A broad group of elected officials at the local, state, and federal levels affirmed these opinions. The Record of Decision stated that the Forest Service will not consent to lease federal oil and gas resources until new information becomes available that would prompt the Forest Service to initiate a new analysis. An example of new information would include a change in public attitude toward the need to access oil and natural gas under the Finger Lakes National Forest. This may be in the form of domestic energy crisis or other unforeseen event. It would not include a new request for leasing.

S. 2222–Cape Fox Land Entitlement Adjustment Act of 2002

This bill, as introduced, provides for an additional 99 acres of Alaska Native Claims Settlement Act (ANCSA) selection area for Cape Fox and Sealaska Corporations at Clover Passage, on Revillagigedo Island. It also requires the Forest Service to offer a land exchange, and if accepted by Cape Fox, complete a land exchange with Cape Fox and Sealaska Corporations. The Department of Agriculture could support the enactment of S.2222 with the changes described below.

Through this land exchange:

- Cape Fox Corporation would receive the surface and subsurface of 2,663.9 acres of national forest system (NFS) lands at the Jualin Mine site near Berners Bay, north of Juneau.
- Sealaska Corporation would receive the surface and subsurface of NFS lands to equalize values of Sealaska subsurface lands and land interests they convey to the U.S. Sealaska Corporation will select NFS lands of equal value from within a 9,329-acre pool of NFS lands at the Kensington Mine, also near Berners Bay.
- The Forest Service would receive lands and land interests of equal value from within: (1) a pool of approximately 3,000 acres and a public trail easement offered by Cape Fox (surface) and Sealaska (subsurface) on Revillagigedo Island; (2) 2,506 acres of Sealaska split estate subsurface, located at Upper Harris River and Kitkun Bay, on Prince of Wales Island; and (3) 2,698 acres of Sealaska subsurface land interests remaining as entitlement from the Haida Land Exchange Acts and the Sealaska/Forest Service Split Estate Exchange Agreement of 1991. Cape Fox will chose the lands to be conveyed to the United States from the 3,000-acre pool in (1) above.

Recently, the Forest Service has been working with the Committee as well as the Cape Fox and Sealaska Corporations to clarify and improve S. 2222 language. Some areas we have agreed to in concept include:

- there is no intent to add to the total land entitlement acreage available to Cape Fox or Sealaska Corporations under the Alaska Native Claims Settlement Act (ANCSA).
- lands to be exchanged will be equal in value.
- federal lands conveyed to Cape Fox or Sealaska shall be subject to the reservation of rights-of-ways for public access for the Alaska Department of Transportation and Public Facilities Juneau Access Project.
- addition of a funding mechanism for the Secretary of Interior to conduct required surveys, value estimates, and related costs of exchanging lands specified in the Act, etc.

The Forest Service will continue to clarify and seek agreement with both Cape Fox and Sealaska Corporations in five general areas related to S. 2222 language as outlined below:

- land valuation standards and acceptance process.
- time frames for completing land exchanges.
- applicability of federal standards for title and hazardous substances certification for exchanged lands.
- the advisability of having the Forest service maintain a five hundred foot buffer inland of the marine shoreline in and adjacent to the waters of Berners Bay.
- reservation of rights-of-way necessary for public access or other national forest purposes for Federal lands conveyed to Cape Fox or Sealaska.

S. 1879—Russian River Land Act

S.1879, if enacted, would resolve a long-standing conflict of land selection rights and management of public activities at the junction of the Russian and Kenai Rivers in Alaska. The public lands at the junction of these rivers was withdrawn from disposal by the USDA Forest Service under public land laws and set aside for a specific management purpose. This withdrawal created a conflict with a historic site selection filed by Cook Inlet Region Incorporated (CIRI) under Section 14(h)(1) of the Alaska Native Claims Settlement Act.

The USDA Forest Service, U.S. Fish and Wildlife Service worked together to address legal concerns and management objectives of all parties. On July 26, 2001, the three parties reached agreement (Russian River Section 14(h)(1) Selection Agreement) on a solution that would fulfill the goals of each party. The Russian River Selection 14(h)(1) Selection Agreement provides consensus on the following points:

- The public campgrounds, parking lots, and most of the land in the vicinity of the confluence of the Kenai and Russian Rivers remain in federal

ownership.

- The right of the public to continue fishing remains unchanged from the current status.
- The Fish and Wildlife Service will convey to CIRC all archaeological and cultural resources from 502 acres of Refuge lands certified by the Bureau of Indian Affairs.
- The Forest Service will convey to CIRC fee title to a 42-acre parcel overlooking the confluence of the two rivers, and a second parcel of about 20 acres upstream of where the Sterling Highway crosses the Kenai River. The 20-acre parcel will be subject to Alaska Native Claims Settlement Act (ANCSA) 14(h)(1) provisions, which require protection of the cultural resources. In addition, a 50-foot public easement along the bank of the Kenai River will be reserved and administered by the Forest Service to allow continued public fishing on the parcel.
- With these conveyances, CIRC will relinquish all ANCSA 14(h)(1) claims in the Squalantnu Archeological District.
- The parties will pursue construction of a public visitor's interpretive center for the shared use of all three parties to be built on the 42-acre parcel to be conveyed to CIRC. The visitor's center would provide for the interpretation of both the natural and cultural resources of the Russian River area. Included in the subject bill is an appropriation for the construction of the proposed visitors center.
- In conjunction with the visitor's interpretive center, the parties will pursue the establishment of an archeological research center and repository that will facilitate the management of cultural resources in the area.
- CIRC may develop certain visitor-oriented facilities on the 42-acre parcel. These facilities may include a lodge, staff housing, restaurant, etc., that would include space for agency personnel as well as CIRC staff.
- The parties will enter into a Memorandum of Understanding for the purpose of insuring the significant activities at Russian River are carried out in a cooperative and coordinated manner.
- The agreement also authorizes, but does not require, an exchange of land where CIRC would receive Kenai Refuge lands adjacent to the Sterling Highway and/or Funny River Road in return for FWS receiving CIRC lands of equal value near the Killey River that is important brown bear habitat. This would provide additional lands for CIRC development and economic benefit while protecting important habitat and migration routes for the Kenai brown bear.

The Department of Agriculture supports the enactment of S.1879 if amended to address concerns with the waiver in Section 3(b) that could exempt activities under the Agreement from current law. Legislation is necessary to provide authority currently

lacking to convey the cultural resources on the Refuge, convey the two small parcels within the Forest, and to adjust refuge and wilderness boundaries in the potential exchange. The bill would also ratify the Selection Agreement already agreed to by the three parties.

We appreciate efforts by Senator Murkowski to sponsor S.1879.

For this measure as well as S. 2222, the Department supports authorization of exchanges through normal public review, including title review and disclosure of the fiscal and environmental effects of the exchanges, to ensure equal value and full awareness of the consequences of the exchanges.

S. 2471--Independent Investigation of Federal Wildland Firefighter Fatalities

This year's already intense fire season reminds us that the safety of agency employees and the public is one of the highest priorities for the Forest Service.

S. 2471 would require the USDA Inspector General to conduct an investigation of any fatality of a firefighter employed by the Forest Service that occurs due to wildfire entrapment or burnover. In these cases, the Inspector General would be required to conduct the investigation in a manner that does not rely upon and is completely independent of any investigation conducted by the USDA Forest Service. The Inspector General would then be required to submit to the Secretary of Agriculture and Congress a report on the investigation.

The Administration did not object to this proposal when considered during the Farm Bill, and do not object to this measure.

Currently, every wildland firefighter fatality of a Forest Service employee requires a Forest Service investigation by an Accident Investigation Team (AIT). The AIT prepares a Factual Report and a Management Evaluation Report. The Factual Report identifies the facts involved in the accident and develops findings from the investigation. The Management Evaluation Report contains an executive summary listing the probable causal factors that are broken into: 1) influencing factors and 2) significant factors. Recommendations to prevent similar accidents are the final products of the Management Evaluation Report. The final Factual and Management Evaluation Reports, together with an Action Plan, are in turn submitted to the approving official, the Chief of the Forest Service.

There is an ongoing need for the Forest Service and DOI bureaus to conduct investigations of accidents, whether fatal or non-fatal, from this programmatic point of view. These investigations provide an essential, factual basis to make improvements or refinements in the delivery of our programs. Neither the Forest Service nor the Departments interprets S. 2471 to preclude these investigations.

Conclusion

Although the Department does not oppose enactment of S. 1846, the Department would like to work with the Committee in more detail to address oil and gas leasing in times of national emergency or as a result of unforeseen events. The Department of Agriculture supports the enactment of S. 2222. USDA also supports enactment of S.1879 if amended to address concerns with Section 3(b). The Department does not object to enactment of S. 2471.

This concludes my testimony. I would be happy to answer any questions that you may have.